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HOUSE BILL 1773

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Delvin, Mastin, Chandler, Mulliken, Clements, Schoesler, Hankins, Sheahan, Grant, Robertson and Honeyford

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1 AN ACT Relating to water marketing; adding a new section to chapter  
2 35.92 RCW; adding a new section to chapter 54.08 RCW; adding a new  
3 section to chapter 57.08 RCW; adding a new section to chapter 87.03  
4 RCW; adding a new section to chapter 89.30 RCW; and adding a new  
5 chapter to Title 90 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** As used in this chapter unless the context  
8 indicates otherwise:

9 (1) "Department" means the department of ecology.

10 (2) "Director" means the director of the department of ecology.

11 (3) "Local water resource agency" means any of the entities listed  
12 in section 3(1)(a) through (f) of this act.

13 (4) "Person" means any firm, association, water users' association,  
14 corporation, irrigation district, or municipal corporation, as well as  
15 an individual.

16 (5) "Water market transfer" or "transfer" means transaction for  
17 consideration carried out through a water conservancy district in  
18 accordance with the provisions of this chapter in which there is a  
19 temporary or permanent change in the place of diversion, place of use,

1 source of supply, time of use, period of use, place of storage, or the  
2 purpose of use of all or part of the water to which any person is  
3 entitled by reason of owning or holding a water right. The terms water  
4 market transfer or transfer include, without limitation, a sale, lease,  
5 or exchange of water rights, an agreement not to exercise a water  
6 right, the sale of water conserved by a present user, or any other  
7 transaction that permits water rights to be transferred from one use to  
8 another for consideration. The terms water market transfer or transfer  
9 include the transfer of rights or the exchange or delivery of water  
10 between public water systems through an intertie.

11 (6) "Water conservancy district" means a district duly formed and  
12 established pursuant to this chapter with the approval of the  
13 department to exercise the powers and authorities of a water  
14 conservancy district enumerated herein.

15 (7) "Water resource inventory area" or "WRIA" means a water  
16 resource inventory area as defined in WAC 173-500-990.

17 NEW SECTION. **Sec. 2.** The legislature finds:

18 (1) Voluntary water market transfers between water users can  
19 reallocate water use in a manner that will result in more efficient use  
20 of water resources, benefiting both the buyer and the seller;

21 (2) Voluntary water market transfers can help alleviate water  
22 shortages, save capital outlays, reduce development costs, provide an  
23 incentive for investment in water conservation efforts by water right  
24 holders, and provide significant environmental benefits;

25 (3) Voluntary water market transfers are the most efficient means  
26 to encourage the reallocation of water resources to their highest and  
27 best use while protecting the rights and interests of water right  
28 holders.

29 For these reasons the legislature declares, it is in the public  
30 interest to facilitate the development of a viable commodity market for  
31 water rights, to encourage voluntary water market transfers, and to  
32 remove existing administrative, legal, and economic barriers to the  
33 voluntary alienation of water rights.

34 To achieve the public purposes of this section, chapter . . ., Laws  
35 of 1995 (this act) shall be liberally construed.

36 NEW SECTION. **Sec. 3.** (1) Any of the following local water  
37 resource agencies may petition the department for permission to

1 organize a water conservancy district and to exercise the powers and  
2 authorities of a water conservancy district enumerated in this chapter  
3 within the geographic boundaries of the local water resource agency and  
4 any area in which the agency provides retail service to customers or  
5 members:

6 (a) Any irrigation district organized under chapter 87.03 RCW;

7 (b) Any reclamation district organized under chapter 89.30 RCW;

8 (c) Any city that operates a municipal water supply system pursuant  
9 to chapter 35.92 RCW;

10 (d) Any public utility district that operates a municipal water  
11 supply system pursuant to chapter 54.08 RCW;

12 (e) Any water district that operates a municipal water supply  
13 system pursuant to chapter 57.08 RCW; or

14 (f) Any cooperative or mutual corporation that operates a public  
15 water system serving one hundred or more accounts.

16 (2) A water conservancy district formed and organized pursuant to  
17 this section by a local water resource agency shall constitute a  
18 separate governmental subdivision of this state, and a public body  
19 corporate and politic exercising public powers. The initial and  
20 successor directors or other governing body of the water conservancy  
21 district shall be appointed by the governing body of the local water  
22 resource agency petitioner. The number of directors shall be three and  
23 any director may be reappointed for successive terms.

24 NEW SECTION. **Sec. 4.** (1) Twelve or more water right holders who  
25 divert water for use within one or more WRIA may petition the  
26 department for permission to organize a water conservancy district  
27 encompassing the geographic area of the WRIAs in which the petitioners  
28 divert or use water and to exercise the powers and authorities of a  
29 water conservancy district enumerated in this chapter, provided, if the  
30 district is proposed to include two or more WRIAs, there shall be at  
31 least six petitioners who divert water for use within each WRIA to be  
32 included in the district.

33 (2) A water conservancy district formed and organized pursuant to  
34 this section by twelve or more water right holders shall constitute a  
35 separate governmental subdivision of this state, and a public body  
36 corporate and politic exercising public powers. The district shall  
37 have a governing body of three directors. Immediately upon approval of  
38 a petition to form a district, the initial governing body of such water

1 conservancy district shall be appointed by the director from among six  
2 individuals recommended by the petitioners. The initial directors  
3 shall form and organize the district and shall serve as the initial  
4 governing body of the district. When the term of any initial director  
5 expires, the director shall appoint a successor. Any director may be  
6 reappointed for successive terms. If any director does not complete  
7 his or her term, a successor shall be appointed to fill out the  
8 remaining term. If any director does not complete his or her term, a  
9 successor shall be appointed to fill out the remaining term. Any water  
10 right holder who diverts or uses water within the WRIAs included in the  
11 district may be appointed as a successor director.

12 NEW SECTION. **Sec. 5.** (1) Any combination of two or more local  
13 water resource agencies or one or more local water resource agencies  
14 and twelve or more eligible water right holder petitioners may jointly  
15 petition the department for permission to organize a water conservancy  
16 district and to exercise the powers and authorities of a water  
17 conservancy district enumerated in this chapter within the geographic  
18 boundaries of any of the participating local water resource agencies  
19 and any area in which any agency provides retail service to customers  
20 or members, or within any WRIA in which at least six of the water right  
21 holder petitioners joining in the petition divert or use water.

22 (2) A water conservancy district formed and organized by any  
23 combination of two or more local water resource agencies, or two or  
24 more local water resource agencies and six eligible water right holder  
25 petitioners, shall constitute a separate governmental subdivision of  
26 this state, and a public body corporate and politic exercising public  
27 powers. Upon approval of the petition, one initial director of the  
28 water conservancy district shall be appointed by the governing body of  
29 each local water resource agency joining in the petition and, if twelve  
30 or more water right holders have joined in the petition, one initial  
31 director shall be appointed by the director from among three  
32 individuals recommended by such water right holder petitioners;  
33 provided, if the number of directors appointed in this manner is even,  
34 the director may appoint an additional director from among any  
35 individuals recommended to the director by any of the petitioners.  
36 Upon any vacancy, successor directors shall be appointed in the same  
37 manner as initial directors. Any director may be reappointed for  
38 successive terms.

1        NEW SECTION.    **Sec. 6.**    A petition to form a water conservancy  
2 district shall conform to the following requirements and shall contain  
3 the following information:

4        (1) The name and address of each petitioner.

5        (2) A brief description of the water right and use of each  
6 petitioner sufficient to identify the place and source of diversion and  
7 the place of use of the water.

8        (3) Identification of the geographic boundaries of any local water  
9 resource agency or WRIA or WRIs to be included within the water  
10 conservancy district.

11       (4) A statement of the need for the district.

12       (5) The proposed bylaws or an equivalent statement of the rules and  
13 procedures that will govern the operation of the district once  
14 organized. Such bylaws shall provide, among other things, for four-  
15 year terms for directors. Terms of directors shall be staggered by the  
16 appointment of initial directors for less than a full four-year term.

17       (6) Identification of the individuals who will be appointed as  
18 initial directors of the district by each local water resource agency  
19 joining in the petition, including a statement of their qualifications  
20 to carry out and supervise the activities of the district, and a list  
21 of the individuals recommended by water right holder petitioners to  
22 serve as initial directors, including a statement of the qualifications  
23 of each individual to carry out and supervise the activities of the  
24 district.

25       NEW SECTION.    **Sec. 7.**    (1) The petition shall be presented to the  
26 director. As soon as practicable after it is received, but no later  
27 than one hundred eighty days, the department shall determine if  
28 approval of the petition would further the purposes of this chapter.

29       (2) No later than one hundred eighty days after the petition is  
30 first presented to the director, he or she shall act on the petition.

31       (a) If the petition is approved, the local water resource agency or  
32 the director, as the case may be, shall immediately appoint the initial  
33 directors, who shall form and organize the district and serve as its  
34 initial governing body. Directors shall serve without compensation but  
35 may be reimbursed for their expenses incurred incident to performing or  
36 conducting district business.

37       (b) If the director fails to act on the petition within one hundred  
38 eighty days after presentation, the petition shall be deemed approved

1 and the petitioners shall be authorized to appoint directors and  
2 organize and establish a water conservancy district for any or all of  
3 the purposes mentioned herein.

4 (c) If a petition is denied, the director shall render a detailed  
5 explanation of the reasons for denial, including any deficiencies in  
6 the petition which, if corrected, would allow the petition to be  
7 approved. A petition that has been denied may be resubmitted with  
8 modifications incorporated for the purpose of addressing the director's  
9 reasons for denial of the original petition.

10 (3) Upon approval of a petition by the director and the appointment  
11 of directors, the petitioners may organize and operate a water  
12 conservancy district with all of the powers that may now or hereafter  
13 be conferred on such districts by law. The bylaws or equivalent  
14 statement of applicable rules of the district submitted with the  
15 petition shall not be amended without the approval of the director.

16 (4) The director may initiate a review of the capability of any  
17 district to carry out the powers, authorities, and duties enumerated in  
18 this chapter and to determine if any existing water conservancy  
19 district has substantially failed to perform its duties in compliance  
20 with law, including compliance with any guidelines adopted by the  
21 department for review and approval of water market transfers. The  
22 director may suspend the authority of any district under this chapter  
23 upon a finding that a district lacks the capability to perform its  
24 authorities and duties under this chapter or that it has substantially  
25 failed to perform its duties in compliance with law; provided, that any  
26 order or decision by the director to suspend the authority of a  
27 district shall specify, in detail, the reasons for the suspension and  
28 the actions necessary to rescind the suspension.

29 NEW SECTION. **Sec. 8.** (1) Each water conservancy district may  
30 establish a schedule of transaction fees and costs for the goods and  
31 services provided by the district and may assess such charges to  
32 persons requesting goods or services from the district according to the  
33 schedule. Such fees need not be uniform from district to district but  
34 may not exceed an amount necessary to cover the district's actual cost  
35 of the goods or services provided, including a reasonable allocation of  
36 the district's overhead costs.

1 (2) The governing body of a water conservancy district may  
2 authorize payments for district operations and activities with revenues  
3 obtained from:

4 (a) Fees for goods and services provided by the district; or

5 (b) Federal, state, or private grants, or contributions from  
6 municipalities.

7 (3) Any municipality or other corporation eligible to petition for  
8 the formation of a water conservancy district may contribute funds to  
9 the district to pay general overhead and administrative costs of the  
10 district and to utilize for that purpose any funds that would be  
11 available to pay for the general overhead and administrative costs of  
12 the municipality or other corporation. In addition, any such municipal  
13 or other corporation may contribute funds to the district to carry out  
14 any project, activity, or purpose which the district is authorized to  
15 carry out provided that the municipal or other corporation is also  
16 authorized to expend funds for such purposes.

17 (4) A water conservancy district organized under the provisions of  
18 this chapter shall not levy taxes or issue bonds, provided, neither  
19 this section nor any other provision of this chapter shall restrict or  
20 limit the powers and authorities of any municipality or any other  
21 corporation to raise or expend funds or limit such person in any way  
22 from exercising the powers and authorities which any such person  
23 possesses when acting in its own right, and such persons shall continue  
24 to have and exercise all powers and authorities according to any  
25 applicable statutes, regulations, articles of incorporation, or other  
26 governing law, agreement, or authority applicable to said person.

27 NEW SECTION. **Sec. 9.** Any water conservancy district, and the  
28 directors thereof, shall have the following powers, in addition to  
29 others granted in this chapter:

30 (1) A water conservancy district is authorized to establish a water  
31 market transfer exchange through which all or part of the water which  
32 any person is entitled to use by reason of owning or holding a water  
33 right may be listed for sale or transfer. Each water conservancy  
34 district shall maintain and publish all information made available to  
35 the district concerning water rights listed with the district and any  
36 application to the district for approval of a water market transfer.

37 (2) Each water conservancy district shall establish a program and  
38 procedures, consistent with applicable law and rules adopted by the

1 department, for the administration of a system of timely local  
2 approvals for water market transfers pursuant to this chapter. The  
3 administration of the system shall be performed exclusively by the  
4 district.

5 (3) The transferor and the transferee of any proposed water market  
6 transfer may apply to a water conservancy district for approval of such  
7 transfer if the water proposed to be transferred is currently diverted  
8 or used within the geographic boundaries of the district, or would be  
9 diverted or used within the geographic boundaries of the district if  
10 the transfer is approved. The application shall contain such  
11 information as may be required by the district in order to review and  
12 act on the application.

13 (4) A water conservancy district may review and approve any  
14 application for a water market transfer if the water proposed to be  
15 transferred is currently diverted or used within the geographic  
16 boundaries of the water conservancy district, or the water would be  
17 diverted or used within the geographic boundaries of the district if  
18 the proposed transfer is approved. Water that is diverted or used  
19 within a district which is transferred to an instream use shall be  
20 deemed to be used within the district. The district shall publish  
21 notice of the application and send notice to state agencies as provided  
22 in RCW 90.03.280. Any person claiming detriment or injury to an  
23 existing water right as a result of the proposed transfer may intervene  
24 in any application before the district. Other interested persons may  
25 submit comments. The district shall review each application for a  
26 transfer and determine whether it meets the requirements of this  
27 chapter and any rules adopted by the department pursuant to this  
28 chapter, and otherwise complies with law. If a majority of the  
29 governing body of the district determines that the application is  
30 complete and in accordance with law, and the transfer may be made  
31 without injury or detriment to existing rights of other water right  
32 holders, the district shall issue to the applicant a certificate  
33 conditionally approving such transfer, subject to review by the  
34 director as provided in this section.

35 (5) A water conservancy district is authorized to acquire,  
36 purchase, hold, lease, manage, occupy, and sell real and personal  
37 property or any interest therein, to enter into and perform any and all  
38 necessary contracts, to appoint and employ the necessary agents and  
39 employees, to employ contractors, including contracts for professional

1 services, to sue and be sued, and to do any and all lawful acts  
2 required and expedient to carry out the purposes of this chapter.

3 NEW SECTION. **Sec. 10.** Notwithstanding any provision of RCW  
4 90.03.380 and 90.44.100 and chapters 90.38 and 90.42 RCW, any water  
5 right holder may enter into a water market transfer according to the  
6 procedures and under the terms and conditions specified in this  
7 chapter. The procedures and criteria for approval of a water market  
8 transfer as defined in this chapter are nonexclusive and are intended  
9 to be a separate, alternative, and supplementary procedure for  
10 obtaining approval of a transfer or change in a water right. Transfers  
11 shall be subject to the following additional terms and conditions:

12 (1) Except as modified by this chapter or as may be inconsistent  
13 with this chapter, other laws applicable to a change or transfer of  
14 water right or use shall be applicable to water market transfers.

15 (2) All or a portion of a water right may be sold and transferred  
16 by the holder to another through a water market transfer and it shall  
17 become appurtenant to any other land or place of use without loss of  
18 priority of right, provided, that the proposed use of the buyer is a  
19 beneficial use and such change can be made without detriment or injury  
20 to existing rights.

21 NEW SECTION. **Sec. 11.** (1) The application of the transferor and  
22 the transferee in any proposed water market transfer shall include, in  
23 addition to other information required by the district, information  
24 sufficient to establish to the district's satisfaction, the  
25 transferor's entitlement to the quantity of water being transferred,  
26 and it shall describe any applicable existing limitations on the right  
27 to use water, including, without limitation, the place of diversion,  
28 place of use, source of supply, time of use, period of use, and the  
29 place of storage.

30 (2) A water right or nonconsumptive use that has not been  
31 adjudicated may be transferred under this chapter, provided, neither  
32 the district's approval of a transfer, nor the department's approval of  
33 the district's action shall constitute an adjudication of the validity,  
34 priority, or quantity of the transferor's water right as between the  
35 transferor or the transferee and the state, or as between the  
36 transferor or the transferee and one or more other water use claimants  
37 and such approvals shall not preclude or prejudice a subsequent

1 challenge to the validity, priority, or quantity of such right in an  
2 adjudication proceeding.

3 NEW SECTION. **Sec. 12.** (1) If an application for transfer proposes  
4 to transfer water rights from one irrigation district to another,  
5 approval of the transfer shall be conditioned upon receipt of  
6 concurrence from each of the irrigation districts that such transfer  
7 will not adversely affect the ability to deliver water to other  
8 landowners or impair the financial integrity of either of the  
9 irrigation districts. A transfer involving a change in place of use or  
10 a nonconsumptive use by an individual water user or users of water  
11 provided by an irrigation district need only receive approval for the  
12 change from the board of directors of the irrigation district if the  
13 use of water continues within the irrigation district.

14 (2) There shall be a rebuttable presumption that any water market  
15 transfer does not impair or injure any existing rights of third  
16 parties; provided, if any person claims to be the holder of a right  
17 impaired by a proposed transfer, such person shall have the right to a  
18 hearing before the governing body of the district. The district shall  
19 receive such evidence as it may deem material and necessary to  
20 determine the validity of the claim of impairment. If the evidence  
21 presented by the party claiming an impairment establishes that more  
22 probably than not, that the claimant's water right would be impaired by  
23 the proposed transfer, the district may not approve the transfer  
24 unless:

25 (a) The applicant and the impaired party agree upon compensation  
26 for the impairment; or

27 (b) The applicant proposes a physical solution that substantially  
28 mitigates the impairment and is reasonable under the circumstances.

29 (3) Any water market transfer that is limited to the consumptive  
30 quantity of the transferor or a nonconsumptive use shall be  
31 conclusively presumed to cause no detriment or impairment to existing  
32 rights of third parties. For purposes of this section, the term  
33 "consumptive quantity" means the actual five-year average amount of  
34 water that the water right holder has diverted reduced by the estimated  
35 amount of return flows. The burden shall be on the applicant to  
36 establish that a proposed transfer is limited to the transferor's  
37 consumptive quantity.

1 (4) Existing rights include instream flows and nonconsumptive uses  
2 for public and private fish propagation established under chapter 90.22  
3 RCW or by court decree, as well as other junior and senior rights.

4 NEW SECTION. **Sec. 13.** (1) If a transfer is approved by a water  
5 conservancy district, the district shall submit a copy of the proposed  
6 certificate conditionally approving the transfer to the department for  
7 review. Along with a copy of the proposed certificate, the district  
8 shall submit a report summarizing any factual findings on which the  
9 district relied in deciding to approve the proposed transfer. Notice  
10 by mail shall be sent to any person who objected to a transfer or who  
11 has requested notice.

12 (2) The department is authorized to review any proposed transfer  
13 approved by a district for compliance with this chapter, any guidelines  
14 adopted by the department, and other applicable law. The parties to a  
15 transfer or any third party whose water right is alleged to be impaired  
16 by a transfer may appeal the district's decision to the department.  
17 The district shall, at the request of the department or any intervenor,  
18 forward to the department the files and records upon which the district  
19 based its decision. The department shall review the action of the  
20 district and affirm, reverse, or modify the action of the district  
21 within thirty days of receipt. The thirty-day time period for  
22 department review of a district's action may be extended an additional  
23 thirty days by the department for any reason, or for any time period by  
24 the consent of the parties to a transfer. If the department fails to  
25 act on the matter within the required time, the district's action shall  
26 be deemed final. Upon approval of a water market transfer by the  
27 action or nonaction of the department, the conditional certificate  
28 issued by the district shall become final and valid.

29 NEW SECTION. **Sec. 14.** The decision of the director or the  
30 department to approve or deny a petition to form a water conservancy  
31 district, or to suspend a water conservancy district's powers and  
32 authorities, or to approve or deny a water market transfer, by action  
33 or nonaction, and any other final agency decision or final action  
34 pursuant to this chapter, is subject to judicial review as provided in  
35 chapter 34.05 RCW.

1        NEW SECTION.    **Sec. 15.**    (1) Sections 1 through 14 of this act shall  
2 not apply to trust water rights acquired by the state through the  
3 funding of water conservation projects under chapter 90.38 RCW or RCW  
4 90.42.010 through 90.42.070.

5        (2) The department may not initiate relinquishment proceedings  
6 under chapter 90.14 RCW as a result of information gained solely  
7 through a proposed water rights transfer under this chapter.

8        NEW SECTION.    **Sec. 16.**    Any cooperative corporation or any mutual  
9 corporation operating a public water system serving one hundred or more  
10 accounts is authorized to be a petitioner to establish a water  
11 conservancy district and to exercise the authorities of a water  
12 conservancy district and any other powers enumerated in sections 1  
13 through 15 of this act.

14        NEW SECTION.    **Sec. 17.**    A new section is added to chapter 35.92 RCW  
15 to read as follows:

16        Any city operating a water system under this chapter is authorized  
17 to be a petitioner to establish a water conservancy district and to  
18 exercise the authorities of a water conservancy district and any other  
19 powers enumerated in sections 1 through 16 of this act.

20        NEW SECTION.    **Sec. 18.**    A new section is added to chapter 54.08 RCW  
21 to read as follows:

22        Any public utility district operating a water system under this  
23 chapter is authorized to be a petitioner to establish a water  
24 conservancy district and to exercise the authorities of a water  
25 conservancy district and any other powers enumerated in sections 1  
26 through 16 of this act.

27        NEW SECTION.    **Sec. 19.**    A new section is added to chapter 57.08 RCW  
28 to read as follows:

29        Any water district operating a water system under this chapter is  
30 authorized to be a petitioner to establish a water conservancy district  
31 and to exercise the authorities of a water conservancy district and any  
32 other powers enumerated in sections 1 through 16 of this act.

33        NEW SECTION.    **Sec. 20.**    A new section is added to chapter 87.03 RCW  
34 to read as follows:

1 Any irrigation district organized and operating pursuant to this  
2 chapter is authorized to be a petitioner to establish a water  
3 conservancy district and to exercise the authorities of a water  
4 conservancy district and any other powers enumerated in sections 1  
5 through 16 of this act.

6 NEW SECTION. **Sec. 21.** A new section is added to chapter 89.30 RCW  
7 to read as follows:

8 Any reclamation district organized and operating pursuant to this  
9 chapter is authorized to be a petitioner to establish a water  
10 conservancy district and to exercise the authorities of a water  
11 conservancy district and any other powers enumerated in sections 1  
12 through 15 of this act.

13 NEW SECTION. **Sec. 22.** Sections 1 through 16 of this act shall  
14 constitute a new chapter in Title 90 RCW.

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